

Application No.: 10/735,392

Docket No.: 66138-0005

REMARKS

Claims 1, 2-6, 8-11, and 24-32 are pending. It is respectfully submitted that there are no claims pending to Groups II and III. Thus, election of a single species for each of these groups is moot. However, all of the claims are directed to a form panel, which is Group I.

Applicants elect the claims associated with Figures 1 and 2, with traverse. The claims associated with Figures 1 and 2 are: independent claims 1, 24, and 28 and dependent claims 3-5, 9-11, 26-27, 30, and 32.

The Commissioner may require restriction if two or more independent and distinct inventions are claimed in a single application (37 CFR 1.142(a)). In the present case, it is respectfully submitted that the claimed subject matter recited in Group I is NOT classified in different classes. Furthermore, the Patent Office examination guidelines define the term "species" as the "specifically different embodiment" of an invention disclosed in the patent application. *See MPEP §806.04(e)(8th ed.).* The claims for which an election of species requirement has been imposed are not the disclosed species, but the definitions of the different inventions representing the species. *Id.* In general, species that may be subject to a restriction requirement are defined as follows:

Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species, must recite the mutually exclusive characteristics of such species. *Id.*, §806.04(f).

Independent claim 1 recites: A form for use with a flowable construction material comprising: a base portion having a front face and a rear face, said front face including a decorative pattern selectively transferred to the flowable construction material; a reinforcement matrix secured to said rear face; and wherein both said base portion and said reinforcement matrix are molded in one-piece from a non-metallic, non-wooden material.

Application No.: 10/735,392

Docket No.: 66138-0005

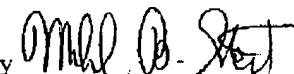
Accordingly, independent claim 1 is generic to Figures 1/2, 3, 4, 5, 6 and 17. Similarly, other independent and dependent claims are generic to the same figures in this application. More specifically, it is respectfully submitted that at least independent claims 1, and 24, and dependent claims 3-5, 9-11, and 26-27 are generic to Figures 1/2, 3, 4, 5, 6 and 17.

Therefore, it is respectfully submitted that the subject matter of the species is sufficiently related that a thorough search for the subject matter of the species of Figures 1 and 2 would encompass a search for the subject matter of all the Species. See MPEP § 803, which states that “[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.” This policy should apply in the present application to avoid unnecessary delay and expense to the Applicants and duplicative examination by the Patent Office.

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 66138-0005 from which the undersigned is authorized to draw.

Dated: December 14, 2005

Respectfully submitted,

By 

Michael B. Stewart

Registration No.: 36,018
RADER, FISHMAN & GRAUER PLLC
39533 Woodward Avenue
Suite 140
Bloomfield Hills, Michigan 48304
(248) 594-0633
Attorney for Applicant

R0308473.DOC